No. 20218

IN THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant

v.

TACOMA GRAVEL AND SUPPLY CO.,
INC., ET AL.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

BRIEF AND APPENDIX FOR APPELLANT

JOHN W. DOUGLAS,
Assistant Attorney General,

WILLIAM N. GOODWIN,
United States Attorney,

ALAN S. ROSENTHAL,
FLORENCE WAGMAN ROISMAN,
Attorneys,
Department of Justice,
Washington, D. C. 20530.

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JURISDICTIONAL STATEMENT

This suit was brought by the United States to recover the unpaid balance of a judgment entered against these defendants in favor of the Reconstruction Finance Corporation, a corporation wholly owned by the United States. The jurisdiction of the district court rested on 28 U.S.C. 1345, which invests district courts with "original jurisdiction of all civil actions, suits or proceedings commenced by the United States * * *." On February 10, 1965, on motion of the United States, the district court entered an order (R. 44 [1]) dismissing Tacoma Gravel and Supply

[1] "R." denotes the reproduced record on appeal.

Co. because that defendant was not within the court's jurisdiction. On February 16, 1965, on cross-motions, the court entered an order granting summary judgment in favor of the remaining defendants. On April 13, 1965, the United States noted this appeal from the district court's judgment. The jurisdiction of this Court rests on 28 U.S.C. 1291.

STATEMENT OF THE CASE

On January 23, 1953, in the Superior Court of the State of Washington, judgment was entered on a note executed by Tacom Gravel and Supply Co., Inc., Mr. and Mrs. S. S. Stanway, Jr., and William Stanway. This judgment in favor of the Reconstruction Finance Corporation was in the principal amount of $30,878 and bore interest at the rate of 6% per annum (R. 4-19, 23-29). Foreclosure and sale of certain items of personal property which had been mortgaged to secure the loan reduced the principal amount due to $26,726.13 (R. 2).

By Reorganization Plan No. 1 of 1957 (71 Stat. 647, 22 F.R. 4633, effective June 30, 1957), [2] the Reconstruction Finance Corporation was abolished and its assets and functions distributed to other agencies. To the Small Business Administration were assigned "the remaining functions with respect to or arising out of programs of financial assistance to business enterprises * * * including responsibility for the note and judgment involved in this case.

On October 8, 1963, the United States filed its complaint in this action (R. 1-3), seeking recovery of $26,726.13, plus

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2 / The Plan is set forth as a note to 15 U.S.C.A. 601.

interest accrued to July 26, 1963 ($16,730.56) plus interest at 6% until the judgment be fully satisfied. Defendants' answer (R. 20) admitted entry of the judgment but denied indebtedness.

On cross-motions (R. 22, 38) the district court rendered summary judgment for the defendants, indicating in its oral statement (reproduced as the appendix to this brief, App. 1a-2a) that the basis for its decision was its belief that the United States was bound by R.C.W. 4.56.210, the Washington statute which extinguishes judgments 6 years after entry. The district court recognized that "if we were dealing with the original substantive right of the United States, that is, the claim under the RFC Act itself, it is clear that state law would not affect that, either by limitation or otherwise." Nonetheless, it thought that (App. 1a-2a)[3/]

> having chosen to take a judgment in the State court, * * * all the United States can obtain in a State court is whatever the State court provides in the way of a judgment and is limited by the State law applicable to it.

SPECIFICATION OF ERRORS

1. The district court erred in holding that the United States is subject to Washington statute R.C.W. 4.56.210.

2. The district court erred in rendering summary judgment for defendants S. S. Stanway, Gladys Stanway and William Stanway.

3/ The transcript of the district court's oral decision inadvertently was omitted from the reproduced record on appeal. We therefore have set forth that decision as an appendix to this brief.

STATUTE INVOLVED

Revised Code of Washington 4.56.210 provides:

Cessation of lien -- Extension prohibited.

> After the expiration of six years from the date of the entry of any judgment heretofore or hereafter rendered in this state, it shall cease to be a lien or charge against the estate or person of the judgment debtor, and no suit, action or other proceeding shall ever be had on any judgment rendered in this state by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force for a greater or longer period than six years from the date of the entry of the original judgment, except as in RCW 4.56.225.

ARGUMENT

Summary

RCW 4.56.210 limits the vitality of judgments rendered in Washington to six years from entry; the statute prohibits any suit on a Washington judgment "by which the lien or duration of such judgment, claim or demand, shall be extended or continued in force" more than six years from entry.

We show below that the district court erred in applying this statute to the United States: This is a statute of limitations which cannot bind the sovereign. Indeed, the policy which exempts the federal government from the operation of state statutes of limitation applies with particular force to a statute of this type, for one already adjudged indebted to the general government should not be permitted to withhold moneys due simply because satisfaction of a judgment has been delayed.

RCW 4.56.210, A STATE STATUTE OF LIMITATION, CANNOT BAR AN ACTION BROUGHT BY THE UNITED STATES

1. It is well settled -- settled, indeed, "beyond doubt r controversy

> that the United States, asserting rights vested in them as a sovereign government, are not bound by any statute of limitations, unless Congress has clearly manifested its intention that they should be so bound.

nited States v. Nashville, Etc. Ry., 118 U.S. 120, 125; nited States v. Thompson, 8 Otto (98 U.S.) 486. The narrow uestion presented by this appeal is whether the established le that state statutes of limitation do not bind the United tates applies to RCW 4.56.210, which directs that no suit shall e brought to extend the vitality of a "judgment, claim or emand" for more than six years after entry of judgment. As e now show, both reason and precedent dictate an affirmative nswer.

2. The reason for the rule excepting the United States rom the operation of state statutes of limitation is a simple ne: its classic statement is that of Mr. Justice Story in nited States v. Hoar, Fed. Cas. No. 15,373 (2 Mason 311, 26 ed. Cas. 329, 330) (D. Mass. 1821):

> The true reason, indeed, why the law has determined, that there can be no negligence or laches imputed to the crown, and, therefore, no delay should bar its right, * * * is to be found in the great public policy of preserving the public rights, revenues, and property from injury and loss, by the negligence of public officers. And though this is sometimes called a prerogative right, it is in fact nothing more than a reservation, or exception, introduced for the public benefit, and equally applicable to all governments.

The principle "is applicable to all governments, which must necessarily act through numerous agents, and is essential to a preservation of the interest and property of the public." Gibson v. Chovkay, 13 Wall. (80 U.S.) 92, 99; United States v. Knight, 14 Pet. (29 U.S.) 301. It survives "because its benefi and advantage extend to every citizen, including the defendant whose plea of laches or limitation it precludes * * *." Guaran Trust Co. v. United States, 304 U.S. 126, 132.

The Supreme Court consistently has held that if a state statute, "as sustained by the state court, undertakes to invali date the claim of the United States, so that it cannot be enfor at all, * * * the statute in that sense transgres[es] the limit of state power." United States v. Summerlin, 310 U.S. 414, 417

Under this reasonsing, the public treasury must be protected from the operation of RCW 4.56.210. In practical effect that statute operates like an ordinary statute of limitations: it "undertakes to invalidate the claim of the United States, so that it cannot be enforced at all * * *." The district court plainly was wrong in believing that its decision did not affect "the right or claim which was the basis of the judgment insofar as terminating that claim or right is concerned" (App. 2a). RC 4.56.210 does destroy that "claim or right"; it destroys the "life of the cause of action." Ball v. Russell, 119 Wash. 206, 205 P. 423 (1922).

Insofar as RCW 4.56.210 differs from ordinary statutes of limitation, the reasons for making such statutes inapplicable to the United States apply a fortiori to RCW 4.56.210, which

invalidates not only a judgment but also the "claim or demand" upon which the judgment is based. As the Supreme Court of Washington has recognized, RCW goes even further than the ordinary statute of limitations (Roche v. McDonald, 136 Wash. 322, 239 P. 1015, 1016-1017 (1925), reversed on other grounds, 275 U.S. 449):

> The statute * * * is not a mere statute of limitation affecting a remedy only. It is more than that. It not only makes a judgment cease to be a "charge against the person or estate of the judgment debtor" after six years from the rendering of the judgment, but also in terms expressly takes away all right of renewal of or action upon the judgment looking to the continuation of its duration or that of the demand on which it rests, for a longer period than six years from the date of its rendition. * * * It simply tells us that no judgment can be rendered extending the period of duration of a judgment or of the claim or demand upon which it rests beyond the period of six years following its rendition.

"The ordinary statute of limitations withholds a remedy, but this statute not only withholds a remedy, but satisfies or destroys the demand as fully as by payment." In re Levinson, 5 F. 2d 75 (W.D. Wash.).

Moreover, the ordinary statute of limitations finds some justification in the fact that reliable information with regard to a cause of action may become unavailable as time passes; litigants should be encouraged to bring suits while memory is fresh and records are available. But this consideration has no relevance to the situation where a judgment already has been entered. The judgment debtor is under a contuning obligation to pay the amount of the debt. Under RCW 4.56.210, if the debtor can escape satisfying the judgment for six years, he need never

make payment. The Washington legislature is free to permit thi when the judgment creditor is an individual, but a state is not at liberty so to prejudice the United States. Such a statute may not be applied to bar a claim of the United States, causing the public treasury to suffer. State statutes cannot defeat th government's endeavor to secure satisfaction of judgments rende in its favor.

3. The Supreme Court has indicated that the United Sta is not bound by statutes such as RCW 4.56.210. In Custer v. McCutcheon, 283, U.S. 514, the Court held that the United State was precluded from securing execution on a judgment otherwise than in accordance with state law because by Rev. Stat. 916 (Fe R. Civ. P. 69(a)) and the rules of court adopted pursuant there Congress had manifested its intention that the United States be bound by state laws dealing with execution. However, the Court expressly admonished that the United States was "not precluded from bringing an action upon the judgment, but merely from havi an execution in the form provided by state law." 283 U.S. at 51 This admonition has been given effect by this Court and by ever other court which has considered the question. Thus, in Schodd v. United States, 69 F.2d 866 (C.A. 9), the United States broug suit on the original judgment on which the United States had be denied execution in Custer v. McCutcheon; this Court granted judgment for the United States, holding that it was not subject the Idaho statute requiring that action on a judgment be brough within six years of entry. This Court reached the same result i Smith v. United States, 143 F. 2d 228, certiorari denied, 323 U

, holding that the California and Washington statutes did not a suit brought by the United States to recover the balance on a criminal judgment.[4] Similarly, in a suit brought by United States to enforce a criminal judgment, a Georgia tute limiting the time within which suits on dormant judgments ht be brought was held not to affect the United States: the rt noted that "the question has been conclusively settled by Supreme Court concerning whether the United States may bring action upon a dormant judgment inconsistent with the limitans of state statute" (United States v. Jenkins, 141 F. Supp. 499, (S.D. Ga), affirmed, 238 F.2d 84 (C.A. 5), appeal dismissed, 352 U.S. 1029) district court said (141 F. Supp. at 503):

> the United States retains its right of action in those states even where there are statutes in those States barring action on dormant judgments or limitations on a right of action. * * * State law determines when a federal judgment becomes dormant but not the right of renewal.

also United States v. Houston, 48 Fed. 207 (D. Kan.), predating ter v. McCutcheon, where the court held that the United States not bound by a state statute prohibiting suit on or renewal dormant judgments:

> Debts due the United States are the sources of revenue needful for the maintenance and successful operation of the government. Every essential right of procedure, remedy and preference is accorded to it upon the highest considerations of public policy.
>
> There is no reason for this Court to depart from this ablished rule to which it long has adhered.

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[4] And see Miller v. United States, 160 F. 2d 608, 609, where s Court noted that as a "cause of action for a second judgment," original judgment "could not become dormant to the United tes, the judgment creditor * * *."

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

JOHN W. DOUGLAS,
Assistant Attorney General

WILLIAM N. GOODWIN,
United States Attorney,

AIAN S. ROSENTHAL,
FLORENCE WAGMAN ROISMAN,
Attorneys,
Department of Justice,
Washington, D. C. 20530.

September 1965.

CERTIFICATE OF COMPLIANCE

I certify that, in connection with the preparation of this brief, I have examined Rule 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion the foregoing brief is in full compliance with those rules.

AIAN S. ROSENTHAL
Attorney.

A P P E N D I X

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
SOUTHERN DIVISION

ITED STATES OF AMERICA,
Plaintiff,
vs.
S. STANWAY, et ux, et al.
Defendants.

No. 3031

TRANSCRIPT OF COURT'S ORAL DECISION rendered in the ove-entitled and numbered cause in the above-entitled court the Honorable GEORGE H. BOLDT, United States District Judge, Tuesday, February 16, 1965, at the United States Courthouse, coma, Washington.

THE COURT: It seems to me that, having elected to sert its claim in a state court proceeding and having taken dgment in that court, the United States, like any other state urt litigant, only have that which is available by a state urt judgment. The statute cited here, 4.56.210, is one of the nitations on or definitions of what a state judgment provides.

If we were dealing with the original substantive right of e United States, that is, the claim under the RFC Act itself, is clear that state law would not affect that, either by nitation or otherwise. But having chosen to take a judgment

in the state court, I think it must be held that all the United States can obtain in a state court is whatever the state court provides in the way of a judgment and is limited by the state law applicable to it.

Whether the claim of the United States is merged in this state court judgment is not necessarily presented for decision. It is only necessary for me to decide whether or not under Washington law this judgment is renewable. In my opinion, it is not. I make no finding or ruling as to the effect this may have upon the right or claim which was the basis of the judgment or the effect of the judgment insofar as terminating that claim or right is concerned. It seems clear to me that a Washington state court judgment is not renewable in the circumstances now presented.

Accordingly, the motion of defendants for summary judgment is granted, and the motion of the plaintiffs for summary judgment is denied.

It is so ordered.

Recess subject to call.

(Whereupon, the court recessed subject to call.)

[CERTIFICATE OMITTED]